IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.124 OF 1995.

ALONG WITH

FIRST APPEAL NO.125 OF 1995.

Hindustand Lever Ltd. : Appellant.

versus

The Municipal Corporation of

Gr.Bombay & ors. : Respondents.

Mr.C.R.Dalvi for the appellant.

None for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 31st January 2005.

ORAL ORDER

1. Heard advocate for the appellant. Nobody is present for the respondents. These are two, appeals filed by the appellant, against the common order passed by the Court of Small Causes at Bombay in Municipal Appeal Nos.15 of 1989 and 97 of 1990. These two appeals, before the Court

of Small Causes at Bombay, were filed by the appellant under Section 27 of the Bombay Municipal Corporation Act challenging the rateable value fixed by the corporation in respect of their property. Those appeals of the appellant came to be dismissed by the Court of Small Causes at Bombay. Hence these two appeals.

2. Counsel for the appellant challenged the impugned order on two grounds. His first contention was that when the appellant had made a complaint to the Assessor, as provided under the Act and as is referred to in para 2 of the judgment, the Assessor had not given any reason for rejecting the application and contention of the appellant and, this, according to Mr.Dalvi, is the violation of principles of natural justice. He relied upon the judgment of this Court reported in **2005 P.L.T. 12 [Dalamal Tower Premises Co-operative Society Ltd. & Anr vz. Municipal Corporation of Brihan Mumbai & ors.]**. My attention was drawn to para 24 of the said judgment wherein this Court has referred to the Judgment of Supreme Court reported in **2001 (1) SCC 291 [Food Corporation of India v. State of Punjab & ors.]** wherein the Supreme Court held and

observed as under :-

> "Care has also to be taken to comply with the principles of natural justice by making the provision for giving notice to the person who is likely to be affected by the proposed amendment giving him not less than a month's time to tender objection, if any to the Committee and allowing him an opportunity of being heard in support of the objections raised. Notice to the affected person mandated in the section is not an empty formality; it is meant for a purpose. a vague and unspecified notice will not provide reasonable opportunity to the notices to file objection meeting the reasons/grounds on which the amendment of the assessment list is proposed to be made."

In the case of our High Court, referred to above, Justice Khandeparkar held that in the case before him, neither notice not the impugned order discloses the basis on which the reassessment has been made and the order was a non-speaking order.

Therefore, it was held that the order cannot be sustained and was liable to be quashed and set aside.

3. This judgment, in my humble opinion, is not applicable to the facts of the present case because tax payer had challenged the order directly by filing a writ petition. However, in the two matters before me the tax payer had firstly filed a complaint as provided under the BMC Act and, thereafter filed an appeal before the Court of Small Causes at Bombay and, then these first appeals to the High Court. It does not appear that this ground was raised before the Court of Small Causes at Bombay, nor in the memo of appeal here. Therefore, when the appellants had availed off the opportunity of moving the appellate Court before the Court of Small Causes, but did not raise this point, then he cannot be permitted to raise this point in these appeals.

4. It was also contended by Mr.Dalvi for the appellant that certain documents were not provided to them at the first stage and, therefore, that has resulted in prejudice. The impugned order clearly shows that whatever

submissions made, either on facts or law, were considered by the Additional Chief Judge, Small Causes Court, Bombay. No grievance appeared to have been made before him about non-supplying the documents. Therefore, there is no merit in these appeals. Both the appeals are dismissed. No order as to costs.

[D.G.DESHPANDE]

31/01/2005 JUDGE.